

**ORIGINAL**

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 VERIO INC.  
 NTT AMERICA, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SILICON VALLEY TELECOM EXCHANGE,  
 LLC, a California corporation,

Plaintiffs,

v.

VERIO, INC., a Delaware corporation; NTT  
 AMERICA, INC., a Delaware corporation; and  
 DOES 1 through 25,

Defendants.

Case No.

**DEFENDANTS VERIO INC. AND NTT  
 AMERICA, INC.'S JOINT NOTICE OF  
 REMOVAL**

Date:  
 Time:  
 Dept:  
 Judge:

Date Action Filed:

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN  
 DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. § 1332, Defendants Verio Inc.  
 ("Verio") and NTT America, Inc. ("NTTA") remove the above-entitled action from the Superior  
 Court of the State of California, County of Santa Clara, to the United States District Court for the  
 Northern District of California.

**PROCEDURAL HISTORY**

1. On January 6, 2012, Silicon Valley Telecom Exchange, LLC ("SVTX") filed its  
 Complaint in the Superior Court of the State of California for the County of Santa Clara against  
 Defendants Verio and NTTA, entitled *Silicon Valley Telecom Exchange, LLC v. Verio, Inc.; NTT*

VERIO INC. AND NTT AMERICA, INC.'S JOINT NOTICE OF REMOVAL  
 Case No. \_\_\_\_\_  
 pa-1512288

**E-Filing****FILED**

FEB 23 2012

RICHARD W. WILSON  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

**ADR****CV 12-00899****HRL**

1 *America, Inc.*, Case No. CV216304. A true and correct copy of the Complaint is attached hereto  
 2 as Exhibit A. Additionally, all other process and orders related to this dispute are attached as  
 3 Exhibits B through E.

4 2. Defendant Verio was served with the Complaint on January 23, 2012.

5 3. Defendant NTTA was served with the Complaint on January 24, 2012.

#### 6 **BASIS FOR REMOVAL**

7 4. This Notice of Removal is filed within 30 days of receipt of service as required by  
 8 28 U.S.C. § 1446(b)(2)(B). By filing this Notice of Removal, Defendant reserves all rights and  
 9 legal defenses to the Complaint.

#### 10 **JURISDICTION**

11 5. This Court has original jurisdiction over this action under 28 U.S.C. § 1332. And  
 12 this action is removable to this Court under 28 U.S.C. § 1441(b) because complete diversity exists  
 13 and the amount in controversy exceeds \$75,000, exclusive of interests and costs.

#### 14 **COMPLETE DIVERSITY EXISTS**

15 6. The diversity standard of 28 U.S.C. § 1332 ("§ 1332") is met if every defendant is  
 16 a citizen of a different state than any of the named plaintiffs. § 1332(c)(1).

17 7. As of the date the Complaint was filed in Santa Clara Superior Court, and as of the  
 18 date of this removal, Plaintiff SVTX is a California limited liability corporation with its principal  
 19 place of business in Santa Clara County, California. (Ex. A ¶ 4).

20 8. As of the date the Complaint was filed in Santa Clara Superior Court, and as of the  
 21 date of this removal, Verio is a Delaware corporation with its principal places of business in  
 22 Colorado and Florida. (Declaration of David Belger ¶¶ 3-5.); *Hertz Corp. v. Friend*, 130 S.Ct.  
 23 1181, 1186 (2010) (locating a corporation's principal place of business at its "nerve center": the  
 24 place "where the corporation's high level officers direct, control, and coordinate the corporation's  
 25 activities," "typically" the corporation's headquarters); *see also Washington v. Shell Oil Prods.*,  
 26 *U.S.*, 2007 U.S. Dist. LEXIS 58782 at \*7-8 (N.D. Cal. Aug. 1, 2007) (declarations may be used to  
 27 establish the factual basis for diversity of citizenship). Thus, under § 1332(c)(1), defendant Verio  
 28 is, and at all relevant times was, a citizen of Delaware and Colorado.

9. As of the date the Complaint was filed in Santa Clara Superior Court and as of the date of this removal, NTTA is a Delaware corporation with its principal place of business in New York. *See* (Declaration of Lee-Wen Chen ¶¶ 3-4); *Hertz Corp.*, 150 S.Ct. at 1186. Thus, under § 1332(c)(1), defendant NTTA is, and at all relevant times was, a citizen of Delaware and New York.

10. The citizenship of defendants sued as "Does" is disregarded for purposes of removal. § 1441(a) ("the citizenship of defendants sued under fictitious names shall be disregarded").

11. Since neither Verio nor NTTA were citizens of California at the time SVTX filed suit, this action satisfies § 1332's diversity of citizenship requirement.

#### THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000

12. Verio and NTTA dispute that they are liable to SVTX. A plain reading of the Complaint, however, demonstrates that the amount in controversy exceeds \$75,000 for purposes of removal.

13. The allegations in SVTX's Complaint make this plain. The Complaint seeks holdover rent based on Verio and NTTA's purported breach of contract, reimbursement of costs allegedly associated with remediation, rent allegedly lost during remediation, miscellaneous damages allegedly associated with remediation, and attorney's fees. (Compl., "Prayer" ¶ 1-3)

14. Specifically, SVTX alleges that beginning in 1999, Verio's annual lease payment to SVTX was \$460,252.21, with an annual rent increase of 2.75%. (Compl. ¶ 9). SVTX also alleges that Verio was, and remains, a holdover tenant owing holdover rent and common area maintenance ("CAM") charges since July 1, 2010. (Compl. ¶¶ 45-46, 50). SVTX further alleges that the holdover rate is 150% of the amount of Annual Rent prior to the date of termination. (Compl. Ex. C at 14). In fact, on November 17, 2011, SVTX sent Verio an invoice seeking \$85,676 in holdover rent for November 2011, and nearly \$4 million in past due rents and late fees. (Belger Dec. at 7.)

15. SVTX likewise alleges that beginning in 1999, NTTA's annual lease payment to SVTX was \$288,072, with an annual rent increase of 4%. (Complaint ¶ 19). SVTX also alleges

1 that NTTA is obligated to pay holdover rent and CAM charges since June 1, 2010. (Complaint ¶¶  
 2 61; *see also* Compl. ¶ 25). SVTX further alleges that the holdover rate is 150% of the amount of  
 3 Annual Rent prior to the date of termination. (Compl., Ex. D at 15). Indeed, SVTX has been  
 4 billing NTTA \$51,252 in month for alleged holdover rental payments, and claims that NTTA  
 5 owes over \$2 million in rent and other charges. (Chen. Dec. at 7.)

6 16. Since the amount in controversy here approaches \$6 million, and § 1332's  
 7 diversity of citizenship requirement is met, removal is appropriate. *See* 28 U.S.C. § 1441(b).

#### 8 NOTICE TO STATE COURT

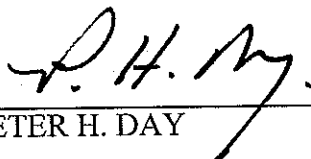
9 17. A copy of this Notice of Removal will be filed with the Clerk of the Superior  
 10 Court for the County of Santa Clara.

#### 11 INTRADISTRICT ASSIGNMENT

12 18. Assignment of this action to the San Jose Division of the United States District  
 13 Court for the Northern District of California is appropriate because this action was originally filed  
 14 in the Superior Court of California, County of Santa Clara. Civil L.R. 3-2(c) and (e), 3-5(b).

15 Dated: February 23, 2012

BRYAN WILSON  
 PETER H. DAY  
 MORRISON & FOERSTER LLP

17  
 18 By:   
 19 PETER H. DAY  
 20 Attorneys for Defendants  
 21 VERIO INC. and NTT AMERICA, INC.  
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